

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

HOUGHTON MIFFLIN COMPANY,

Plaintiff,

-against-

ALVIN SANDBERG and SUSAN C.  
FAWCETT,

Defendants.

21235

AMOUNT	100.00
SUMMONS ISS.	YES
LOCAL RULE 41	YES
WAIVER OF SERV.	YES
NOT ISSUED	YES
NO FTS OR 131	NO
BY DUTY CLK	YES
COMPLAINT	3-23-00

00 CV 10559 DPW

Plaintiff Houghton Mifflin Company, by its attorney  
Oscar W. Weekes, as and for its complaint herein, alleges as  
follows:

1. Plaintiff Houghton Mifflin Company is a corporation  
organized under the laws of the Commonwealth of Massachusetts and  
is a renowned publisher of literary works, including educational  
textbooks.

2. Upon information and belief, defendant Alvin  
Sandberg ("Sandberg") is a resident and citizen of the  
Commonwealth of Massachusetts.

3. Upon information and belief, defendant Susan C.  
Fawcett ("Fawcett") is a resident and citizen of the City and  
State of New York.

Jurisdiction and Venue

4. This is an action for interpleader and declaratory  
relief brought pursuant to 28 USC §§ 1335 and 2201 to declare the  
rights of defendants as between them in and to royalties due with  
respect to a revised edition of a literary work entitled  
"Evergreen: A Guide To Basic Writing" (hereinafter "Evergreen").  
The defendants, claimants to the said royalties, which are in an  
amount in excess of \$500, are citizens of different states.

DOCKETED

1

5. Venue is proper in this District pursuant to 28 USC § 1397 in that defendant Sandberg resides herein.

The Underlying Facts

6. By written agreement dated May 31, 1977 between plaintiff, on the one hand, and Sandberg and Fawcett on the other hand, collectively as Author, the parties agreed to collaborate in the preparation and publication of Evergreen. The said agreement provided for a royalty to Sandberg and Fawcett of 15% of the net receipts on the sale of the first 25,000 copies of Evergreen, and 18-3/4% of the net receipts thereafter, to be equally divided between them.

7. The aforesaid agreement was amended by a document executed by the parties as of March 9, 1983 (the "Amendment"), which provided, *inter alia*:

a. Sandberg and Fawcett shall share equally in all royalty and other earnings from any revision of Evergreen provided each of them contributes equally to that revision.

b. If, within sixty days of plaintiff's notification requesting a revision, the parties are unable to reach agreement as to the meaning of "equal contributions to the revision" referred to in the said Amendment, or as to the specific tasks for which each of Sandberg and Fawcett are responsible, plaintiff shall determine those questions in its discretion within thirty days.

c. Sandberg and Fawcett shall review and comment upon the other's proposed contributions to such revision, but each of them will be responsible for deciding the final content of his or her material to be submitted to plaintiff for determination of acceptability.

d. If for any reason, either Sandberg or Fawcett is

unable or unwilling or fails to contribute his or her agreed share of a revision, the other shall have the opportunity to complete the non-performing Author's tasks. If one Author undertakes to complete the tasks of the other non-performing Author, the plaintiff in its discretion shall determine the fair value of the respective contribution to the revision made by each of Sandberg and Fawcett and shall equitably apportion the same by adjusting royalties payable with respect to such revisions.

8. Copies of the Agreement and the Amendment are annexed hereto as Exhibits A and B, respectively.

9. Evergreen was first published in 1980. Thereafter, plaintiff published five revisions of the Work, all of which were prepared by Sandberg and Fawcett.

Claim For Relief

11. Defendant Fawcett claims that with respect to the Sixth Edition of Evergreen (the "Sixth Edition"), the tasks assigned to her were substantially greater than the tasks assigned to Sandberg. Fawcett further claims that Sandberg was unable, unwilling and/or failed to perform certain of the tasks assigned to him with respect to the Sixth Edition and that she performed such tasks in his place. Accordingly, Fawcett asserts that she is entitled to a prospective adjustment of royalties in an amount in excess of 50% thereon with respect to the Sixth Edition, the first payment of which is due to be made by plaintiff by March 31, 2000.

12. Sandberg has denied Fawcett's claims as to the Sixth Edition and maintains he is entitled to share equally in the royalties payable thereon.

13. By reason of these conflicting claims of the defendants, a justiciable controversy has arisen as to the

respective rights of defendants in and to royalty payments due to each with respect to the Sixth Edition as of March 31, 2000.

WHEREFORE, plaintiff requests judgment as follows:

(1) That the Court declare the respective entitlements of the defendants to the royalties due on the Sixth Edition as of March 31, 2000.

(2) That each of the defendants be restrained from instituting any action against the plaintiff for the recovery of the royalties due defendants as of March 31, 2000 with respect to the Sixth Edition.

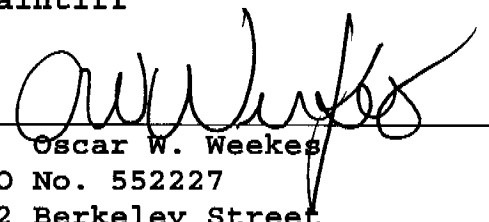
(3) That upon its payment to the Clerk of the Court of the full royalty payments due defendants on or before March 31, 2000 with respect to the Sixth Edition, plaintiff be discharged from all liability to defendants in the premises with respect to such royalties.

(4) That plaintiff recover its costs and its attorneys fees with respect to the instant dispute.

Dated: Boston, Massachusetts  
March 21, 2000

HOUGHTON MIFFLIN COMPANY  
Plaintiff

By

  
Oscar W. Weekes

BBO No. 552227  
222 Berkeley Street  
Boston, Massachusetts 02116  
(617) 351-5000

# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Houghton Mifflin Company

DEFENDANTS Alvin Sandberg and Susan C. Fawcett

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Oscar W. Weekes (617) 351-5134  
Houghton Mifflin  
222 Berkeley St. Boston MA

ATTORNEYS (IF KNOWN)

**00 cv 10559 DPW**

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State ☒ PTF ☐ DEF 1 Incorporated or Principal Place of Business in This State  
Citizen of Another State ☐ PTF ☒ DEF 2 Incorporated and Principal Place of Business in Another State  
Citizen or Subject of a Foreign Country ☐ PTF ☐ DEF 3 Foreign Nation

## IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce ICC Rule <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organization <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice Act <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Declaratory Relief Sought regard to royalty payment between Co-Authors

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

3/23/2000

SIGNATURE OF ATTORNEY OF RECORD

Oscar W. Weekes Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Houghton Mifflin Company  
vs. Alvin Sandberg and Susan Fawcett
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).  
N/A
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?  
No
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? No  
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) \_\_\_\_\_
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? No
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? \_\_\_\_\_
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Boston
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION No OR WESTERN SECTION No

(PLEASE TYPE OR PRINT)  
ATTORNEY'S NAMEOscar W. Weekes  
ADDRESS 222 Berkeley Street c/o Houghton Mifflin Boston MA 02116  
TELEPHONE NO. 617 351-5134

(Category.frm - 09/92)



# HOUGHTON MIFFLIN

Oscar W. Weekes  
Senior Counsel and  
Corporate Compliance Officer

Houghton Mifflin Company  
222 Berkeley Street  
Boston, MA 02116-3764  
phone 617.351.5134  
fax 617.351.1125  
oscar\_weekes@hmc.com  
www.hmc.com

## VIA MESSENGER DELIVERY

March 23, 2000

Clerk Magistrate  
United States District Court of Massachusetts  
One Courthouse Way  
Suite 2300  
Boston, MA 02110

*Re: Houghton Mifflin v. Fawcett*

Dear Clerk:

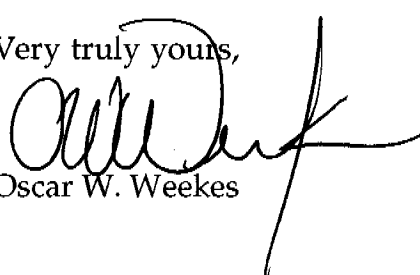
Enclosed for filing please find the following documents:

- (1) Filing fee of \$150.00
- (2) Complaint
- (3) Affidavit in Support of Motion to Pay  
Disputed Sum into Court; and
- (4) Proposed Order

Please stamp and return to the messenger one (1) original complaint.

Thank you for your prompt attention to this matter.

Very truly yours,



Oscar W. Weekes

OWW/mr  
Enclosures:

RECEIVED  
U.S. DISTRICT COURT  
BOSTON, MASS.  
MAR 23 3 24 PM '00